IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3859 OF 2006

Shri Nivrutti Khandu Pingle .. Petitioner

Vs.

Tahasildar or Adhyasi Adhikari
Shri Ashok Mhate, Khalapur and
ors. .. Respondents

Mr. B.D. Joshi with Ms.Pushpa Diwan for petitioner.
Mr. T.R. Yadav h/f Mr. Shreekant V. Gavand for respondent nos. 3 to 8.
Mr. A.H. Palekar, AGP for respondent nos.1, 11 and 12.

CORAM: B.H. MARLAPALLE, J.

Date : June 20, 2006.

P.C.:

1. Heard Mr. Joshi with Ms. Diwan the learned counsel for the petitioner who has suffered the motion of no confidence against him while he was the Sarpanch of Village Panchayat Navandhe, Taluka Khalapur in Raigad District. He, therefore, approached the Collector challenging the motion of no confidence passed against him and the Additional Collector, Raigad by his Judgment and Order dated 18/3/2006 dismissed the application. The petitioner, therefore, filed an appeal under Section 35(3)(c) of the Bombay

Village Panchayats Act, 1958 before the Divisional Commissioner, Konkan Division and the appeal was registered as Appeal No.113 of 2006. The Divisional Commissioer, Konkan Division was pleased to dismiss the appeal by his judgment and order dated 28/4/2006 and hence this petition.

2. While challenging the notice of no confidence motion passed agaist the petitioner, three grounds have been raised, namely, (a) that the notice of no confidence motion was signed by three members of the village panchayat and one of them, who was elected on the reserved seat, had sustained disqualification as perthe GR dated 22/1/2003, (b) that out of the six members, who voted in support of the no confidence motion, three of them had sustained disqualification as per the GR dated 22/1/2003 and (c) the Tahasildar held the meeting within a period of seven days from the receipt of the notice of no confidence motion and this is contrary to the provisions of Section 35(2) of the Act.

3. There is no dispute that the elections were

held to the village panchayat on 16/12/2003 and three of the nine members of the said village panchayat were elected on the reserved seats. They are Mrs.Manda Hadap, Mrs. Kusani Waghmare and Mrs. Smita Lakhimale. They were required to obtaine caste verification certificate and the GR dated 22/1/2003 states, inter alia, that as soon as such members on the reserved seats are elected, they ought to submit necessary documents to the Collector's office for verification of their caste claim, failing which they will not be entitled to participate in the proceedings of the village panchayat. The Additional Collector in his order dated 18/3/2006 noted thatthe members were informed on 9/9/2004 to submit their documents for caste vertification and it was not known whether they had so submitted or not. It was for the village panchayat, including the Sarpanch and Gramsevak to inform whether the compliance of the GR dated 22/1/2003 was done by such members or not. The village panchayat had not informed the Collerctorat or the Tahsild Office prior to the meeting scheduled for discussing the notice of no confidence motion that these three members had not submitted the documents

for their caste verification and, thereforee, they were disqualified from participating in the village panchayat proceedings. On the contrary, the proceedings book maintained by the village panchayat indicated that all these three members were all along participating in the village panchayat. In fact, the election to the post of Sarpanch was held within few weeks from 16/12/2003 and when the petitioner himself was elected all the other eight members of the village panchayat had voted in the said election and at no point of time anybody pointed out that these three members had not submitted the documents for caste verification. It is thus clear that the issue raised regarding the disqualification sustained by three members as per GR dated 22/1/2003 was taken up by way of an after thought and there was no record either maintained by the village panchayat or communicated to the Tahsil or Collectorat Office that these three members had not complied with the requirementsof the said GR and, therefore, they were disqualified from participating in the village panchayat proceedings.

4. Coming to the last ground, Section 35(2) of

the Act reads as under:-

> " Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the panchayat for considering the motion of no confidence at the office of the panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the Upa-Sarpanch against whom the motionof no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the metting (including the right to vote)."

. There is no dispute that all the nine members participated in the meeting held on 31/1/2006, including the petitioner himself and six members had voted in favour of the motion. Mr. Joshi, the learned counsel for the petitioner has referred to a decision of the Division Bench of this Court in the case of Janardan Shankar Watane vs. C.E.O. Zilla Parishad, Amravati (1965 Mh.L.J. NOC 2). In the said case the notice of no confidence against the Sarpanch was served on 7/8/1963, notices were issued for a meeting on 24/8/1963 and the meeting was held on 1/9/1963. The challenge of the Sarpanch that the meeting was not called within one week was upheld by

this court by reading the provisions of Section 35(1) of the Act and Rule 2 of the No Confidence Rules. However, this decision will not be applicable to the instant case in as much as the scheme of Section 35 of the Act came to be substituted by the Maharashtra Act No.13 of 1975 and the word "convene" will have to be held as "hold" and not "call".

5. The concurrent findings recorded by both the authorities below on perusal of the proceedings of the meeting held on 31/1/2006, therefore, do not suffer from any error apparent on the face of the record and the impugned orders call for no interference in this petition under Article 227 of the Constitution. It is also clear in the scheme of the Act that if the petitioner has vacated the post of Sarpanch on account of no confidence motion against him on 31/1/2006, he is not disqualified or debarred from contesting the election for Sarpanch as and when it is held afresh.

6. The petition is rejected summarily.

(B.H. Marlapalle,J.)